IN THE HIGH COURT OF BOMBAY AT GOA
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CRIMINAL MISCELLANEOUS APPLICATION NO. 131 OF 2002

Winnie Coutinho, d/o
A. Coutinho, 41 years
of age, Advocate, r/o
D-4/D, Government
Quarters, St. Inez,
Panaji, Goa. ... Petitioner.

Versus

P. J. Augustine, Advocate
r/o H. No. 716, Adarsh
Nagar, Airport Road,
Chicalim, Vasco da Gama,
Goa. ... Respondent.

Shri S. G. Dessai, Senior Advocate with Shri A. B. D'Sa, advocate for the petitioner.

Shri Zeller D'Souza, advocate for the respondent.

CORAM: P. V. KAKADE, J.

DATE: 5th October, 2002.

ORAL JUDGMENT

Rule. Rule made returnable forthwith.

2. The petitioner in this application has moved this Court under the provisions of Section 482 of the Code of Criminal Procedure, seeking to invoke the inherent powers of this Court to quash and set aside the Order made by the learned J.M.F.C., Vasco da Gama, dated 31st July, 2002, in Cri. Case No.168/P/2001/C, whereby process under Section 204 of the Code of Criminal Procedure, is issued against the present petitioner, for offences punishable under Sections 211, 500 and 501 of the Indian Penal Code.

3. I have heard Shri S. G. Dessai, learned

Senior Counsel for the petitioner and Shri Z. D'Souza, learned counsel for the respondent, who have taken me through the entire record of the petition. I have also perused the record and proceeding of the original complaint filed by the present respondent before the learned J.M.F.C., Vasco da Gama.

In order to understand the facts involved in the dispute in a proper perspective, it would be just and proper to look into the background of the entire unfortunate dispute between the parties. Both the parties are practising advocates. The present respondent is a retired Naval Officer and presently practises law in Vasco Da Gama Court. In the year 1996, he opened an office on 31st January Road, Panaji, with intention to practise at Panaji, when he came into contact with the present petitioner. It was the respondent's case that on the request of the petitioner he allowed the use of a part of the office to her, i.e. to occupy a "table space" in the office and for the sake of convenience, a key of the said office was made available to the petitioner. The present petitioner was using the office space and such arrangement continued for about three years. There was certain dispute between parties, for which the respondent asked the petitioner not to use the office any more and demanded the key of the premises from her.

It was on 1st August, 2000, that the petitioner made an application complaining against the present respondent, submitting that she was enjoying possession of the office premises till the said date and various clients, including Government Officers and Police Inspectors used to visit her for necessary instructions. On that day, i.e. 1st August, 2000, as usual, when the petitioner's typist went to open the office, she could not enter the premises as the original lock which was placed by the petitioner was changed and it was missing. Her enquiry revealed that the respondent had changed the lock, thereby restraining the petitioner from entering the office. According to the petitioner, the respondent had a dispute with the landlady and was demanding that the premises be rented out to him only. When the petitioner visited the Police Station, she learnt that the respondent had also informed the Panaji Police Station that the petitioner had handed over the premises to him, which fact indicated that the respondent was acting with ulterior motive to forcibly dispossess her.

The second complaint from the present petitioner to the Police by way of application dated 10th August, 2000, came to be filed, which showed that she was left with no alternative but to open the door by removing the lock which was changed by the respondent as all her files were inside and final hearing matters in the High Court were pending. The door was opened with the help of the

landlady. On that day, when the petitioner went to the office to collect her files in the morning, she found that the lock was once again changed and her name on the door was taken off. While concluding the said complaint application, the petitioner made request to the Police to kindly look into the matter as the respondent had "history of breaking people's lock and forcibly taking possession". This particular sentence became the bone of contention between the parties, because on 31st December, 2001, i.e. about one year and four months after the letter dated 10th August, 2000, was sent to the Police, the present respondent filed complaint before the J.M.F.C., Vasco da Gama, against the petitioner for commission of the offences punishable under Section 211, 500 and 501 of the Indian Penal Code.

The version of the respondent in the said complaint was that he had allowed the petitioner to occupy a "table space" for her convenience and the key of the office was given to her by him. According to him, when his request to vacate the office was not paid heed to, then he "took over" the office space with the keys that were in his possession and put a fresh lock to the same, which was broken by the petitioner, forcing the complainant to put a fresh lock on to the office door. The respondent's version also shows that the petitioner again broke open the lock of the office and when he found out about it he again broke

open the lock put by the petitioner and put a fresh lock on the premises, regarding which the complaint application dated 10th August, 2000, was filed, in which the alleged imputation was made by the petitioner stating that in the case of the respondent there was history of breaking people's locks and forcibly taking possession.

4. It may be also noted that a civil suit is lodged by the present respondent against the petitioner as well as the landlady and the said Civil Suit No.212/2000/C is pending adjudication. According to him, injunctory relief against the petitioner and the landlady was granted by the lower court and the appeal was pending in the District Court, Panaji, at which time his suit was dismissed for default and he filed application for restoration. Therefore, it is clear from the record that the civil lis is pending between the parties in respect of the office premises in which the landlady is also made a party, on the ground that she is in collusion with the present petitioner.

5. On this factual matrix the complaint came to be filed on 31st December, 2001, by the present respondent. The learned Magistrate thereafter recorded the statement of the complainant himself as P.W.1 and the statement of his own advocate in the lower court as P.W.2, in the course of verification under Section 200 of the Code of Criminal

Procedure. In the course of verification statement, the present respondent has changed his version from the complaint and has stated that in the year 1999 he requested the petitioner to vacate the premises and she handed over the key to him. Thereafter she changed her mind and collected the key from the typist and, therefore, he has stated that she put her new lock to the office and therefore, he had to break it open. According to the respondent, the petitioner again broke open the lock which he had put to the office door and, therefore, he was forced to remove that lock also and filed the civil suit. In the course of verification the respondent further states that the petitioner filed two complaint applications against him, on 1st August and 10th August, 2000, alleging that he had broken the lock of the office and stated that he had history of breaking locks and taking possession of the properties of other persons and, therefore he had approached the criminal Court against the petitioner alleging that she had committed the impugned offences. So far as the other witness of the respondent is concerned, i.e. his own lawyer, he has narrated the nature of the dispute between the parties and has stated that he has heard people talking about the said complaint filed by the present petitioner. Moreover, he has stated that the present respondent showed him the copy of the complaint application dated 10th August, 2000 and he came to know therefrom that the petitioner had made the impugned

allegation against the respondent.

On the basis of the said record, the learned Magistrate found that there were sufficient grounds to issue summons against the present petitioner and, accordingly, she issued process against her for offences punishable under Sections 211, 500 and 501 of the Indian Penal Code and summoned her to appear on a particular date. Hence, this application is filed to quash the order on various grounds.

6. Shri Dessai, learned Senior Counsel for the petitioner, vehemently urged that there was absolutely no prima facie ground for the Magistrate to issue the process as no element of any of the alleged offences was disclosed, even on the face of it. According to him, it was nothing but a classic case of criminalization of a civil lis between the parties only to wreak vengeance on the petitioner due to the dispute of civil nature. On the other hand, Shri D'Souza, learned counsel for the respondent, urged at length, that the submission that the learned Magistrate had rightly taken cognizance of the offences after going through the prima facie evidence on record, which was sufficient to issue process for the offences involved and, therefore, according to him, the application deserves to be dismissed.

7. At the outset it could be noted that a perusal of the entire record shows that it is an admitted as well as evident position that due to the dispute between the parties, a civil suit is filed by the present respondent, which is pending adjudication before the Civil Court. Moreover, it is also apparent from the record and in fact the reading of the complaint filed by the respondent makes it clear, that he has broken open the lock of the premises on two occasions, apparently to replace the locks put by the present petitioner. It is the case of the petitioner that as her legal briefs of profession and other papers were locked inside the office due to the fact that the present respondent no.1 removed the earlier lock and replaced it with a new lock, she had no alternative but to break open the lock and get access to the files inside the office. At this juncture, it is the case of the respondent, vide para 5 of his complaint, that he , therefore, "took over the office space with the keys which were in his possession and thereafter put a fresh lock to the same", which plainly means that he broke open the lock for the first time and then put a fresh lock at that place. Thereafter, again on 10th August, 2000, the petitioner found that her earlier lock was also replaced by a new lock and hence she approached the Police on the suspicion that it was the act of the respondent and none else. Therefore, it is quite clear that the respondent himself broke open the lock on two occasions on the said premises.

There is also a reference to an act of the respondent of similar nature, which took place in the year 1997, or about that time, to which incident the present petitioner was witness. The record produced clearly shows that the present respondent owned bungalow no.58 located at Defence Colony, Porvorim and he had taken forcible possession thereof by breaking open the lock and dispossessing the occupants from the said bungalow. No doubt he has tried to create a record by complaining to the Police that he had taken over the possession of the property with the consent of the security guards, etc. However, the record produced with the petition is sufficient to show that he had forcibly taken over possession of that property from the occupants instead of adhering to the due process of law to evict the occupant.

7. Therefore, the alleged imputation to the effect that "the respondent has history of breaking people's lock and forcibly taking possession", has to be looked into from this angle keeping in mind all the facts in the background as mentioned above. When the respondent even admittedly has broken open the lock on the premises on two occasions, and also has evidently history of taking forcible possession of his own bungalow from the rightful occupants in the year 1997, then, definitely, it amounts to history of breaking open locks and forcibly taking possession of the property.

In this connection, the Apex Court has observed in the case of **G. Sagar Suri & Anr.** vs. **State of U.P. & Ors.**, {(2000) 2 SCC 636}, to the effect that the jurisdiction under Section 482 of the Code of Criminal Procedure has to be exercised with great care. In exercise of its jurisdiction, the High Court has not to examine the matter superficially. It is to be seen if the matter, which is essentially of a civil nature, has been given a cloak of a criminal offence. Criminal proceedings are not a short-cut to other remedies available in law. Therefore, before issuing process, a criminal court has to exercise a great deal of caution. For the accused, it is a serious matter. Therefore, In the present case before me, I am satisfied that while issuing process the learned Magistrate has not taken into account either the factum of pendency of civil suit between the parties, but also the admitted position that the respondent no.1 broke the lock on the premises on two occasions and in all probability had obtained the forcible possession of his bungalow from its occupants in the year 1997. In other words, the alleged imputation was required to be looked into from the set of facts prima facie evident from the record and, therefore, I hold that this is a fit case for intervention, contemplated under Section 482 of the Criminal Procedure Code.

8. Shri D'Souza, learned counsel for the respondent, further urged that the learned Magistrate has

rightly exercised her jurisdiction when she was satisfied that there was prima facie evidence and consequently has issued process by invoking the provisions of Section 204 of the Code of Criminal Procedure. In this regard, it must be noted that the scope of enquiry under Section 202 of the Code of Criminal Procedure is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint, in order to determine whether process should be issued or not, under Section 204 of the Code of Criminal Procedure, or whether the complaint should be dismissed by resorting to Section 203 of the Cod of Criminal Procedure, on the footing that there is no sufficient ground for proceeding on the basis of the statement of the complainant and his witness, if any. In other words, during the course of enquiry under Section 202 of the Code of Criminal Procedure, the enquiry officer has to satisfy himself simply that the evidence adduced by the prosecution, whether prima facie case has been made out, so as to put the proposed accused on a regular trial and that no detailed enquiry is called for during the course of such an enquiry. In the present case before me, the learned Magistrate had proceeded to hold enquiry by herself by examining the witnesses at the stage of verification. Therefore, it was necessary for the learned Magistrate to take into account not only the statements made in the course of such enquiry, but those were also required to be examined vis-a-vis contents of the complaint which are at

variance with the enquiry statements. Moreover, the enquiry statements of the respondents as also his witness did not disclose any impugned offence contemplated to have been committed by the petitioner and, therefore, in my considered view, issuance of process contemplated under Section 204 of the Code of Criminal Procedure was a totally erroneous act on the part of the Magistrate.

9. It was further urged on behalf of the respondent that interference by this Court under the provisions of Section 482 of the Code of Criminal Procedure would not be justified in this particular case. In this regard, Shri Dessai, learned Senior Counsel for the petitioner invited my attention to the ruling of the Apex Court in the case of **Hiridaya Ranjan Prasad Verma** vs. **State of Bihar & Anr.,**{(2000) 4 SCC 168}, which defines the scope of Section 482 of the Code of Criminal Procedure, while dealing with the question of quashing of a complaint and criminal proceedings. In the course of the said judgment, the Apex Court has also referred to its earlier judgment in the case of **State of Haryana** vs.**Bhajan Lal,** {1992 Supp.(1) SCC 335}. The Apex Court has referred to the said judgment and has made observations thus:-

> "8. In the case of **State of Harayan vs. Bhajan Lal** this Court in the backdrop of interpretation of various relevant provisions of the Code of Criminal Procedure under Chapter XIV and of the principles of law

enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 Cr.P.C., gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice, making it clear that it may not be possible to lay down any precise, clearly-defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised:(SCC pp.378-79, para 102).

> '102.(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
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> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
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> (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
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> (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.
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> (5) Where the allegations made in

> the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
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> (6) Where there is an express bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code of the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
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> (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.'."

Therefore, if we are to be guided by the said principles laid down by the Supreme Court in the above-quoted reference, in my view, the present case falls squarely within the Clauses (1), (3), (5) and (7) of the said ruling, where the allegations made in the FIR or the complaint, even if they are taken on their face value and accepted in their entirety, do not, prima facie, constitute the offence, or make out a case before the accused. In the present case before me, it is an admitted position that the respondent/complainant has broken open the locks on two occasions and has taken forcible possession of his property three years ago and the petitioner was witness to that

aspect and, therefore, when she referred to that fact as "history of breaking people's lock and taking forcible possession", no Court of law even remotely would suggest that it is an imputation contemplated under the provisions of Section 499 of the Indian Penal Code. This is especially so when it is apparent from the record that the criminal proceeding is a proceeding attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. Therefore, I have no doubt whatsoever that the case of the petitioner comes under the categories mentioned above in the said ruling of the Supreme Court in the case of **State of Haryana vs. Bhajan Lal** (supra).

10. The process is issued by the learned Magistrate against the petitioner for three offences i.e. under Sections 211, 500 and 501 of the Indian Penal Code. Section 211 contemplates making false charge of offences made with intention to injure, of which no element is apparent even on the face of the record and, therefore, issuance of process under the said count is not justified at all. Similarly, the ingredients of Section 501 of the Indian Penal Code, i.e. printing or engraving matter known to be defamatory would not come within the purview of the said provision. Process under the said count is also not justified. If we critically peruse the provisions of

Section 499 of the Indian Penal Code with relation to Explanation 4, it is obvious that the alleged imputation is squarely covered by the said explanation. It reads thus:-

> **"Explanation 4:** No imputation is said to harm a person's reputation unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful."

There is no prima facie evidence to show that the imputation directly or indirectly in the estimation of others lowered the moral and intellectual character of the respondent. In fact, the evidence of the respondent's witness who was examined in the course of the verification by the learned Magistrate, states that he heard other people talking about the said complaint filed by the accused. No details are given and this statement is nothing but hearsay, which also would not be sufficient for the purpose for which it was brought on record. Moreover, if at all the alleged imputation is held to be covered by the provisions of Section 499 of the Indian Penal Code, still, it is squarely covered by the Ninth Exception to the said Section. It reads thus:-

> **"Ninth Exception - Imputation made in good faith by person for protection of his or other's interest.**
>
> It is not defamation to make an imputation

> on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it, or any other person, or for the public good."

Therefore, initially it is seen that the alleged imputation is nothing but a statement of facts. Moreover, it is made by the petitioner for her own protection and not with intent to defame or with knowledge that it would defame the respondent, which is the basic ingredient of Section 499 of the Indian Penal Code, which is again completely missed by the learned Magistrate while issuing the process. In other words, I am satisfied that the learned Magistrate has issued process not only mechanically, but without application of her mind to the facts and circumstances revealed from the record. Therefore, the Order of issuance of process deserves to be quashed by invoking the provisions of Section 482 of the Code of Criminal Procedure.

11. Shri Dessai, learned Senior Counsel for the petitioner, vehemently urged that the entire record was sufficient to show that there is a clear attempt on the part of the respondent to criminalize the civil lis between the parties and is manifestly attended with mala fide with ulterior motive for wreaking vengeance on the petitioner with a view to spite her due to private and personal grudge and, therefore, prayed for exemplary costs to be saddled on the respondent. Taking into account the surrounding facts and circumstances revealed from the record, I find force in

the said submission and propose to saddle the respondent with exemplary costs. Hence the following Order:-

The Application is allowed and made absolute in terms of prayer clause (a). The Order dated 31st July, 2002, passed by the learned Judicial Magistrate First Class, Vasco da Gama in Criminal Case No. 168/P/2001/C stands set aside and quashed.

In view of the facts and circumstances involved, exemplary costs of Rs.3,000/- (rupees three thousand only) are imposed upon the respondent. The costs shall be deposited within four weeks from the date of this order for the purpose and benefit of the State Legal Aid Committee, Panaji.

P. V KAKADE, J.

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